



February 24, 2000

Ms. Betty J. Marks  
General Counsel  
Texas Department of Housing and Community Affairs  
P. O. Box 13941  
Austin, Texas 78711-3941

OR2000-0685

Dear Ms. Marks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132431.

The Texas Department of Housing and Community Affairs (the “department”) received a request to view the proposal submitted by Countrywide Home Loans, Inc. (“Countrywide”) in response to the department’s solicitation for services pertaining to the single-family mortgage program. You state that the department does not assert an opinion as to whether the requested information should be withheld from disclosure under section 552.110 of the Government Code.

Since the property and privacy rights of a third party may be implicated by the release of the requested information, you notified Countrywide whose information is responsive to the request. *See* Gov’t Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov’t Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). Countrywide responded to your notice by submitting to this office its brief in which it argues that certain portions of its proposal are excepted from disclosure under both prongs of section 552.110.

Section 552.110 protects the property interests of private parties by excepting from disclosure two types of information: (a) trade secrets, and (b) commercial or financial

information for which it is demonstrated, based on specific factual evidence, that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

We consider Countryside's arguments under the commercial or financial prong of section 552.110. An entity will not meet its burden under section 552.110(b) by a mere conclusory assertion of a possibility of commercial harm. *See generally National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). The governmental body or interested third party raising section 552.110(b) must provide a specific factual or evidentiary showing that substantial competitive injury would likely result from disclosure of the requested information.

After a review of Countryside's arguments and the information it wishes to withhold, we conclude that it has demonstrated, based on specific factual evidence, that disclosure of certain portions of its proposal would cause substantial competitive harm to Countryside. Therefore, the department must withhold those portions based on section 552.110(b).

In light of our conclusion under the commercial or financial prong of section 552.110, we need not address Countryside's trade secret claims. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

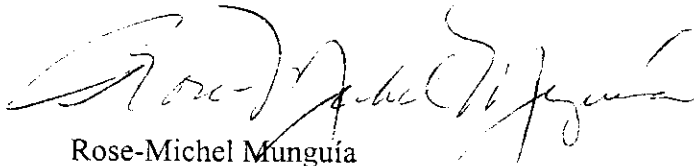
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Rose-Michel Munguia", is written over a horizontal line.

Rose-Michel Munguia  
Assistant Attorney General  
Open Records Division

RMM/jc

Ref: ID# 132431

Encl. Submitted documents

cc: Mr. Michael A. Sullivan  
CPA  
CFO & Interim President  
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(w/o enclosures)